

# LONG TERM CARE OFFICES

**Casa Grande**

500 North Florence Street  
Casa Grande, AZ 85222  
(520) 421-1500  
(800) 654-8713

**Cottonwood**

One North Main Street  
Cottonwood, AZ 86326  
(928) 634-8101

**Glendale**

2830 West Glendale Ave.  
Suite 8, 19, & 34  
Glendale, AZ 85051  
(602) 417-6000

**Kingman**

519 East Beale Street, Suite 150  
Kingman, AZ 86401  
(928) 753-2828  
(888) 300-8348

**Mesa**

460 North Mesa Drive, Suite 101  
Mesa, AZ 85201  
(602) 417-6400

**Prescott**

1570 Willow Creek Road  
Prescott, AZ 86301  
(928) 778-3968  
(888) 778-5600

**Sierra Vista**

484 East Wilcox Drive  
Sierra Vista, AZ 85635  
(520) 459-7050

**Yuma**

3850 West 16<sup>th</sup> Street, Suite B  
Yuma, AZ 85364  
(928) 782-0776

**Chinle**

PO Box 1942  
Chinle, AZ 86503  
(928) 674-5439  
(888) 800-3804

**Flagstaff**

3480 East Route 66  
Flagstaff, AZ 86004  
(928) 527-4104  
(800) 540-5042

**Globe/Miami**

2250 Highway 60, Suite H  
Miami, AZ 85539-9700  
(928) 425-3165  
(888) 425-3165

**Lake Havasu City**

285 S. Lake Havasu Avenue, Suite A  
Lake Havasu City, AZ 86403  
(928) 453-5100  
(800) 654-2076

**Phoenix South**

700 East Jefferson, First Floor  
Phoenix, AZ 85034  
(602) 417-6600

**Show Low**

580 E. Old Linden Road, Suite 3  
Show Low, AZ 85901  
(928) 537-1515  
(877) 537-1515

**Tucson**

110 South Church Ave., Suite 3250  
Tucson, AZ 85701  
(520) 205-8600  
(800) 824-2656  
(800) 423-9132

## Public Information Brochure

### Trusts



### Arizona Health Care Cost Containment System

### Policy Information About Eligibility Requirements

### for the Arizona Long Term Care System (ALTCS)

Written by the Office of Eligibility Policy

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## INTRODUCTION

This information is provided by the Arizona Health Care Cost Containment System (AHCCCS) to help you understand the Arizona Long Term Care System (ALTCS/Medicaid) policies regarding trusts. However, the information presented does not cover all situations and is not intended as legal advice to you. If you want legal assistance, consult your attorney.

The information provided in this brochure concerning trusts is based on Section 1917(d) of the Social Security Act and on Arizona Revised Statute 36-2934.01. In this brochure, "You" refers to the person applying for or receiving ALTCS/AHCCCS benefits.

## DEFINITIONS

The following definitions will help you to better understand the ALTCS policies about trusts:

### **Beneficiary**

The person who has any present or future interest, vested or contingent, in the trust, including the owner of an interest by assignment or other transfer and any person entitled to enforce the trust. This is the person for whose benefit the trust was created.

### **Grantor**

One who creates a trust, also called settlor or trustor.

### **Irrevocable**

A trust, which may not be revoked, in any way, after its creation, by the grantor or their representative. A trust which is called irrevocable but which will terminate if some action is taken by the grantor (i.e. contains a trigger clause) is considered a revocable trust.

### **Legal Instrument or Device Similar to a Trust**

Any instrument that exhibits the general characteristics of a trust, but which may not be called a trust under State law. This can include (but is not limited to) escrow accounts, investment accounts, pension funds, and other similar devices managed by an individual or entity with fiduciary obligations. These are treated in the same manner as a formal trust.

## NOTES

## **FAIR HEARING RIGHTS**

If you submit an application to the Arizona Long Term Care System (ALTCS) Office, a determination will be made concerning your eligibility. You have the right to request a hearing concerning any action or inaction by ALTCS/AHCCCS regarding your medical and/or long-term care benefits. Your hearing will be heard by an Administrative Law Judge at the Office of Administrative Hearings who will listen to your case and issue a recommendation. A decision will then be issued by the Director of AHCCCS. It is your right to bring an attorney or any other person to the hearing and to review your case file before the hearing. The notice you receive concerning the eligibility determination will explain your hearing rights in more detail.

If you have questions on your particular situation, please contact your local ALTCS office for more information. The addresses and phone numbers for these offices are found on the back of this brochure.

## **Liquid**

Refers to cash or items that are readily convertible to cash, including securities, notes, and accounts.

## **Medicaid Qualifying Trust**

A Medicaid Qualifying Trust (MQT) is a trust or similar legal device established before August 11, 1993, by you, your spouse or legal representative, under which you are the beneficiary of all or part of the payments from the trust and the amount of the distribution is determined by a trustee who is permitted to exercise any discretion with regard to the amount to be distributed by you. Although referred to as a Medicaid Qualifying Trust, this type of trust may actually cause you to be ineligible for Medicaid benefits.

## **Merger of Interests**

When the sole trustee and the sole beneficiary are the same individual there is a merger of interests (i.e., the legal title and beneficial interest are merged in one person) and the trust terminates. Since there is no trust, the resources are evaluated as though no trust exists. Merger of interests does not apply to special treatment trusts discussed later in this brochure.

## **Payment from a Trust (Disbursements)**

Any disbursement from the trust, including but not limited to cash and other liquid items, personal property, real property or the right to use and occupy real property.

## **Payments To or For Your Benefit**

Payments made to you are any amount disbursed from the trust, paid directly to you or to someone acting on your behalf (e.g., a guardian or legal representative). Payments made for your benefit are disbursements of any sort paid to another entity such that you get some benefit. This includes (but is not limited to):

- Purchase of clothing or other items for you;
- Payment for services you receive;
- Payment for care (medical or personal) that you receive;
- Payments to maintain a home;
- Payments to compensate a trustee for managing the trust; and
- Attorney Fees and Taxes and other costs related to the administration of your trust.

### **Responsible Relative**

A financially responsible relative is the spouse of the customer or, if the customer is a child under eighteen years of age, the parent of the customer.

### **Revocable**

A revocable trust may be revoked by the individual who established the trust. A revocable trust can be nullified by withdrawal, recall, or reversal. A trust which provides that the trust can be modified or terminated by a court is considered to be a revocable trust, since the grantor (or his representative) can petition the court to terminate the trust.

### **Trust**

Any arrangement whereby money or property is entrusted to one or more persons with the intention that it be administered for the benefit of one or more others, including perhaps the trustor.

### **Trust Corpus**

The income or resources that form the body of the trust, also referred to as the trust principal. Resources or income in the trust corpus may be available to you even though you no longer own them. All exclusions that could be applied if the item were owned by you are still applied when the item is owned by the trust, with the exception of home property. When your home property is titled to the trust, the ALTCS home property exclusion can no longer be applied and the home is treated as a countable resource for ALTCS eligibility.

### **Trustee**

An individual or corporation which holds the legal title to money, property, or an estate for the benefit of another person or persons or for certain specified purposes. However, the trustee may also be a trust beneficiary. A trustee holds a fiduciary responsibility to manage the trust's resources and income for the benefit of the beneficiaries.

### **Trust Instrument**

The formal document which creates the trust and contains the powers of the trustees and the rights of the beneficiaries. It may be a will, a deed in trust or a formal declaration of trust.

### **Trust Officer**

The official or officer in a trust company who has direct charge of funds administered by the trust company in its capacity as trustee.

### **Trustor**

One who creates a trust. Also called settlor, or grantor.

## **VERIFICATION REQUIREMENTS**

In order for AHCCCS to evaluate the trust, you must furnish the following items to the ALTCS Eligibility Specialist:

- A copy of the trust instrument, with all amendments and restatements;
- A Schedule A or other trust document listing the income or resources assigned to the trust at the time it was created. If the trust is funded with an injury settlement or by a will, a copy of the injury settlement or will;
- The name, address, and phone numbers of all trustees;
- Verification of the source of the income or resources assigned to the trust;
- Verification of the value of the income or resources used to fund the trust at the time the trust was created, such as financial statements and tax assessment valuations;
- If there has been a change in trust assets, AHCCCS will require a signed Declaration of Facts listing the items that are currently assigned to the trust;
- Verification of whether income and resources assigned to the trust have been legally titled to the trust such as financial statements, deeds or property titles;
- Verification of the current market value of all income and resources assigned to the trust such as financial statements or tax assessment valuations;
- Verification of the dates, amounts and purposes of any disbursements from the trust since the trust was created or since verification was last provided to ALTCS;
- Verification of the dates, amounts and sources of any deposits to the trust since the trust was created or since verification was last provided to ALTCS; and
- Any other items specifically requested by ALTCS.

- Any withdrawals made from the trust by you, where trust principal is considered a resource, are not counted as income.
- Any interest or dividends earned on the trust principal, where the trust principal is considered a resource, are considered income to you and a resource (if retained) the month following the month of receipt.

2. When you are the beneficiary:

- The maximum distribution available to you from the trust, as defined in the discretionary clause (including invasion of the principal for your support and maintenance) may not actually be available to you. This will depend on whether you have access to the trust corpus.
  - The trust principal is not a resource when your access to it is restricted, even when the trust can be revoked by someone other than you or your spouse.
  - The trust is considered a resource if you have unrestricted access to the principal; withdrawals are then conversion of a resource, not income.
- When the trust principal is not considered a resource, payments made to you for any reason, or to another party to purchase food, clothing or shelter on your behalf are income in the month of receipt. Other disbursements, such as vendor payments for medical needs, are not counted as income.
- When you have a right to the income produced by the trust (whether or not it is applied for your use on a current basis), it is considered income as it becomes available. When you have no right to the income produced by the trust (e.g., it is added to the principal), such proceeds are not considered income to you.

## THE SEVEN DIFFERENT TYPES OF TRUSTS

There are seven different types of trusts described in this pamphlet:

1. Special Treatment Trusts for Disabled Individuals Under Age 65;
2. Special Treatment Income-only trusts (also called Miller or stream-of-income trusts);
3. Special Treatment Pooled Trusts;
4. Revocable Trusts Created on or after August 11, 1993;
5. Irrevocable Trusts Created on or after August 11, 1993;
6. Medicaid Qualifying Trusts created on or before August 10, 1993; and
7. Trusts established by a Will or with another person's resources or income (also called non-grantor trusts).

Different policies and procedures apply to trusts depending upon the date the trust was created, whose income or resources were used to fund the trust and who created the trust. The next section lists the basic characteristics for each kind of trust.

## TRUSTS ESTABLISHED WITH YOUR INCOME OR ASSETS ON AND AFTER AUGUST 11, 1993

### 1. Special Treatment Trusts

AHCCCS will evaluate all trusts established on and after August 11, 1993, to see if they are entitled to special treatment. If not entitled to special treatment, the trust will instead be treated as a Revocable or Irrevocable trust (see Section 2).

Special Treatment Trusts allow persons who would otherwise be ineligible for the ALTCS program due to excess resources or income to become eligible for the program. In return, AHCCCS is allowed to take steps to recover program costs by:

- ◆ Assessing a share of cost to these cases;

- ◆ Setting limits on the types of allowable trust disbursements to ensure that the trust corpus is used for the benefit of the trust beneficiary and to protect the Administration's beneficiary interest (see Section B); and
- ◆ Recovering program expenditures from the remaining trust corpus when the trust is terminated or the beneficiary dies (see Section L).

#### A. General Criteria

To be entitled to special treatment, the trust must meet all of the following general criteria:

- The trust must be established on or after August 11, 1993;
- It must contain only your income or resources to be entitled to this special treatment. If the trust contains the income or resources of you and another individual, including your spouse, it cannot be treated as a special treatment trust.
- The trust must state that disbursements from the trust shall only be issued for your benefit as defined in Arizona State Law (A.R.S. 36-2934.01). (See Section B).
- To receive special treatment, the trust must establish AHCCCS as a beneficiary of the trust in accordance with the following criteria:
  1. If the trust is irrevocable it must contain a clause that certifies that AHCCCS is the primary beneficiary upon your death and will receive all amounts remaining in the trust, up to an amount equal to the total medical expenses paid on your behalf while receiving ALTCS.
  2. If the trust is revocable, the trust must contain a clause that certifies that upon revocation of the trust, termination of the trust, or upon your death, AHCCCS will receive all amounts remaining in the trust, up to an amount equal to the total medical expenses paid on your behalf while receiving ALTCS.
- If the trust receives income that is counted in determining share of cost, the trust document must specify that the share of cost shall be paid on a monthly basis; and

4. To the extent that any portion of the trust principal is considered a resource, withdrawals or payments of principal are not income; they are conversion of a resource.
5. The policies in this section do not apply to any trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded.
6. If you assign income to the trust (instead of or in addition to resources) the income is counted the same for eligibility and share of cost as though it were never assigned to the trust.
7. The trust procedures may be waived by the Administration if an undue hardship exists.
8. When the sole trustee and the sole beneficiary are the same person, there is a merger of interests and your resources will be evaluated as if no trust exists.

If you establish a trust using you own resources and name someone else as the beneficiary, this may be considered a transfer of resources that may affect your eligibility for long term care services.

#### **TRUSTS ESTABLISHED BY A WILL OR TRUSTS FUNDED SOLELY BY THE INCOME OR RESOURCES OF SOMEONE OTHER THAN YOU OR YOUR SPOUSE**

For trusts established by a Will or by someone other than you, your spouse, or your legal representative (also called a non-grantor trust), the following policies are applied to the trust. The policies and procedures listed below also apply to trusts established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded.

1. When you are the trustee:
  - The trust is not a resource if you have no access to the resource for you own personal use.
  - The trust is a resource if you have the legal ability to revoke the trust and use the assets for your own benefit, regardless of whose income or resources were used to establish the trust.



**MEDICAID QUALIFYING TRUSTS  
(TRUSTS ESTABLISHED OTHER THAN  
BY WILL BEFORE AUGUST 11, 1993)**

For trusts established by you, your spouse, or your Legal Representative by means other than a Will before August 11, 1993, the following policies are applied to the trust. Although this type of trust is known as a Medicaid-Qualifying Trust (MQT), it may actually make you ineligible for benefits.

1. The maximum distribution that can be paid by the trustee in the budget month, assuming full exercise of the Trustee's discretion, is a countable resource to you. The maximum distributable amount considered available includes only amounts which can be distributed from either the income (interest) or principal of the trust. This applies even if the amounts are not actually being distributed by the trustee. The amounts actually being distributed to the beneficiary for any purpose are treated as income and/or resources, depending on applicable policy. The maximum distribution available from the trust is usually set forth in the discretionary clause of the trust document.
2. The policy stated above is applicable regardless of whether any of the conditions listed below apply:
  - The trust is revocable or irrevocable;
  - The trust is established for purposes other than to qualify for ALTCS;
  - Distribution of trust funds is actually made or the trustee discretion is actually exercised.
3. When the trust instrument permits the distribution of trust funds to or for the benefit of the beneficiary pursuant to a court order, or permits the beneficiary to petition the court for disbursement of trust funds when the trustee refuses to disburse them, the beneficiary must, as a condition of eligibility, petition the court for such disbursements of trust funds. A decision of eligibility will not be made until the court has been petitioned and an outcome has been obtained. If the court is not petitioned, the trust corpus will be considered available as a resource.

- The trust instrument must contain a provision that requires the direct deposit of all trust income into the trust account.

**B. Disbursements Only for the Benefit of the Trust Beneficiary**

All Special Treatment Trust documents must contain the following clause:

"Disbursements shall not be made for purposes other than those described in A.R.S. 36-2934.01."

A.R.S. 36-2934.01 states that disbursements can be issued from a Special Treatment Trust only for the following items:

- ❑ Reasonable legal and professional expenses related to the administration of the trust including:
  - Taxes owed on trust investments,
  - Investment fees, and
  - Reasonable trustee, accounting and attorney fees
- ❑ Guardianship and conservatorship fees for the trust beneficiary based on the fair market value of the services provided.
- ❑ The ALTCS Share of Cost
- ❑ Health Insurance premiums, medically necessary medical expenses and special medical needs, including:
  - Expenses required to make the home accessible to the person;
  - The purchase and maintenance of a specially equipped vehicle, but only if titled to the trust or to the beneficiary with a lien against the vehicle held by the trust in an amount equal to the current market value of the vehicle;
  - Durable medical equipment;
  - Over the counter supplies and medication including diapers, lotions and cleansing wipes; and
  - Personal care services that are determined to be medically necessary by the program contractor, and provided by a person who is registered by the administration to provide the services and is not a parent of a beneficiary under age 18 or a spouse of the trust beneficiary.
- ❑ Maintenance payments for the spouse or family, if permitted as a deduction in the ALTCS Share of Cost calculation.
- ❑ Provision for burial expenses that is limited to one of the following methods:
  - Purchase of a prepaid burial plan funded by an irrevocable life insurance policy, irrevocable burial account, irrevocable trust account or irrevocable escrow account; or
  - Purchase of life insurance to fund a burial plan for the beneficiary with a face value that does not exceed \$1,500 after

allowing deductions for burial plot items as defined by the Administration; or,

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- Funding a burial fund account in an amount not to exceed \$1,500.
- ❑ Other expenses for your benefit including:
  - Living expenses for food and shelter. If home property or other real property is purchased by the trust, it must be titled to the trust;
  - Income taxes owed on trust income or income of the beneficiary that is assigned to the trust when an actual tax liability is established;
  - Travel expenses for a companion, other than a beneficiary's spouse or parent if the beneficiary is under age 18, when a companion is required to enable the beneficiary to travel for non-medical reasons;
  - Entertainment, educational or vocational needs or items that are consistent with the trust beneficiary's ability to use those items; and
  - Other expenses that are individually approved by the Director.
- ❑ Only disbursements for Personal Needs, from an income only trust, or disbursements for family and spouse maintenance, health insurance and non-covered medical expenses can also be allowed as Share of Cost deductions.

#### C. Prohibited Trust Disbursements

Gifts to, payments for or loans to other persons, whether in cash or in kind, are NOT allowable disbursements.

Trust funds cannot be used for the benefit of anyone other than you. Issuance of a prohibited disbursement could result in a determination that the trust is not entitled to special treatment and could also be considered an uncompensated transfer. (see Section K).

Disbursements that are not allowed include:

- ❑ Health insurance premiums for other individuals;
- ❑ Child support and alimony payments;
- ❑ Gifts, payments or loans to or for other persons, in cash or kind;
- ❑ Paying all of the shelter costs for a shared household;
- ❑ Income taxes; unless an actual tax liability is established;
- ❑ Travel expenses for family members;
- ❑ Payments on past debts.

In addition, when a disbursement is issued for common household expenses or any other shared expense, the payment shall be considered as being for your benefit only when the payment does not exceed your proportionate share of that expense. The proportionate share is the total expense divided by the number of people who share

the expense. For example, if you live with two other people, the trust can only be used to pay one-third of the household's rent and utilities.

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#### EXAMPLE:

You established a trust on 11/3/96. The resources used to form the trust corpus are \$2,000 that belonged to you, \$1,000 that belonged to your spouse, and \$1,000 that belonged to your brother.

The total value of the trust corpus is \$4,000. The portion of the trust corpus contributed by you and your spouse is \$3,000.

$\$3,000 \text{ divided by } \$4,000 = .75$

Therefore, 75% is your ownership interest.

Once your ownership interest is established it remains the same unless you can show that your ownership interest in the trust has changed.

Your ownership interest is used to determine your and your spouse's portion of the trust corpus. Only that portion attributable to you and your spouse is used in the eligibility determination even if the entire trust corpus could be distributed to you or your spouse.

The entire amount of any payment made to you or for your benefit (whether treated as income or a resource) is countable income in the month of distribution. This means that your ownership interest in the trust corpus is not applied to any payments made to you or for your benefit.

When you jointly own a trust with other individuals and payments are made to the other individuals, a transfer may occur if you do not get your share of the payments from the trust, based on your ownership interest in the trust corpus.

#### EXAMPLE:

The trust is paying \$100 per month to you and \$100 to your brother. Your ownership interest in the trust corpus is 75%.

$\$200 \text{ (total payments from trust)} \times .75 = \$150.$

$\$150 \text{ (income you should be receiving)}$   
 $- \$100 \text{ (actual income you are receiving)}$   
 $= \$50 \text{ as a transfer that may affect your eligibility}$

- Income received by you or your spouse, assigned to the trust or deposited directly into the trust is countable. This applies even when no distribution from the trust can be made under any circumstances.
- When a payment from the trust is actually made for any purpose other than to you or for your benefit, it is considered a transfer and may affect your eligibility for long term care services.
- When no distributions from your trust can be made under any circumstances (either from the corpus or interest earned), this is considered a transfer without fair compensation and may affect your eligibility for long term care services. The amount used to compute the penalty period (if any) is the total value of the trust corpus (principal and interest) from which no payments can be made as of the date the irrevocable trust was established or the date the trust payments could no longer be made (if the payments could no longer be made at some time after the trust was established), whichever occurs earlier.

#### C. Joint Ownership of the Trust Corpus

When the trust corpus of a revocable or irrevocable trust contains income and/or resources belonging to you, your spouse (or both) and income or resources of other individuals, the trust provisions outlined in this section apply only to your and your spouse's portion of the trust. Your portion of the trust (ownership interest) is determined by dividing the total value of the trust corpus by the value of the income and/or resources owned by you or your spouse prior to being placed in the trust.

#### D. Unacceptable Clauses in the Trust Instrument that Preclude Special Treatment

If your trust contains any of the following types of clauses, it does not meet the criteria for a Special Treatment Trust. A trust that contains one of these types of clauses will be evaluated as a Revocable or Irrevocable trust (Section 2. below) and your eligibility will be determined accordingly.

- A trust is not entitled to special treatment if it contains a statement that allows for payment of any expenses (with the exception of administrative expenses or attorney's fees related to termination of the trust as explained below) prior to disbursement of the funds in the trust to AHCCCS. Expenses that are not allowed include expenses for last illnesses and funeral, outstanding debts, or any other types of payments.
- A trust may allow payment of administrative expenses, including attorney's fees or trustee's fees related to termination of the trust, prior to payment of the funds in the trust to AHCCCS. However, the trust will be entitled to special treatment only if the trust clearly states that it will allow reasonable and necessary administrative expenses approved by the Medicaid agency or approved by the probate court with the advance notice to the Medicaid agency.
- The trust cannot say that all references in the trust to Arizona, ALTCS, AHCCCS or otherwise will be replaced by parallel references to the Medicaid agency in another state should you become a resident of a state other than Arizona. Instead, it may say that references in the trust to Arizona, ALTCS, or AHCCCS will also apply to the Medicaid agency in the other state. We require this to ensure that AHCCCS remains a primary beneficiary even if you move to another state. If you do move out of state, the trustee is required to report when the recipient dies or the trust is terminated by calling toll free: 1-888-378-2836, or by writing to: Public Consulting Group, Inc., P.O. Box 4049 Tallahassee, FL 32315-4049.
- If the trust contains a statement that allows for payments from the trust to meet the needs of your spouse or dependents (even if you have no spouse or dependents), the trust is not entitled to special treatment since you are not the sole beneficiary of the trust. (This does not include maintenance needs allowances for a spouse or family member when determined in accordance with ALTCS Share of Cost policies as described in Section B.)

#### E. Trust For A Disabled Individual Under Age 65

To be entitled to special treatment, the trust must meet all of the general criteria in A, B, and C above, in addition to the following:

- The trust must be established by your parent, grandparent, legal guardian or a court. You cannot establish one of these types of trusts for yourself.
- The trust corpus contains only your income or resources (or both). Trusts which contain income or resources of another person cannot be treated as a special treatment trust.
- You must be disabled (as determined by the Social Security Administration and/or be medically eligible for ALTCS as determined by the AHCCCS Pre-Admission Screening Tool) at the time the trust was established.
- You must be under age 65 when the trust was established. If a trust meets all of the criteria in this section and the trust was established while you are under age 65 and you then reach age 65, the trust can continue to be treated as a special treatment trust. However, any additions to the trust after you reach age 65 will be considered a transfer of assets that might affect your eligibility for long term care benefits.

- In determining eligibility and share of cost, ALTCS will count either the income that is received by the trust or the disbursements issued by the trust, whichever is greater. (Dividends and interest earned by the trust corpus and added to the principal are not counted in this calculation.)
- Income received by you or your spouse, assigned to the trust or deposited directly into the trust is countable.
- Payments from the trust that are not to you or are not for your benefit are considered a transfer that may affect your eligibility for long term care services.
- When the trust corpus contains the income or resources of other individuals, it will be necessary to determine what portion is attributable to each beneficiary. See Section C for additional information.

#### B. Irrevocable Trusts

When a trust (that is not a special treatment trust) is irrevocable, it is treated as follows:

- When a payment can be made from the trust corpus or income to you or for your benefit, the amount that is available for distribution is considered a countable resource.
- When a payment from the trust is actually made to you or for your benefit, the payment is income to you.
- Disbursements from the trust that are not liquid (real property, vehicle, etc) are considered a resource.
- In determining eligibility and share of cost, ALTCS will count either the income that is received by the trust or the disbursements issued by the trust, whichever is greater. (Dividends and interest earned by the trust corpus and added to the principal are not counted in this calculation.)

The procedures in this section apply to a trust when the income or resources (or both) of you or your spouse are used to fund the trust. When the income or resources of you or your spouse (or both) and the income or resources of other individuals are used to fund the trust, refer to Section C: **Joint Ownership of the Trust Corpus.**

AHCCCS applies the procedures listed in this section to all trusts created on and after August 11, 1993, which are funded in whole or in part by your (or your spouse's) income or resources regardless of any of the following stipulations that may be contained in the trust document:

- Purpose for which the trust was established;
- Whether the trustee has discretion or discretion is actually exercised;
- Whether there are any restrictions on when or whether distributions may be made;
- Whether there are any restrictions on the use of distributions from the trust.

The policies in this section also apply to Medicaid Qualifying Trusts. The procedures outlined in this section may be waived by the Administration in the case of undue hardship.

#### A. Revocable Trusts

When a trust (that is not a special treatment trust) is revocable, it will be treated as follows:

- The entire trust corpus (or the portion of the trust corpus that belongs to you) is a countable resource.
- Payments made from the trust to you or for your benefit are countable income in the month of disbursement and a countable resource thereafter.
- Disbursements from the trust that are not liquid (real property, vehicles, etc) are considered a resource.

#### F. Income-Only Trust

This kind of trust is commonly known as a stream-of-income trust or an Income Cap Trust, or a "Miller" trust. To be entitled to special treatment, the trust must meet all of the general criteria in A. above in addition to the following:

- The trust must be established by you, your spouse, your representative or a person, court or administrative body acting at the direction of you or your spouse.
- The trust corpus must be composed of only your income (i.e., pension, Social Security, etc.). No resources may be used to fund the trust and no resources can ever be added to the trust. Once the trust is established, the income (and interest earned by the trust corpus) can accumulate in the trust without affecting this requirement. If the trust corpus is held in a financial account (e.g., bank, CD, etc.), the account must have a zero balance when the trust is established and have only income placed in it. Income that accumulates is the trust account is not counted as a resource in determining ALTCS eligibility.
- The trust document must state that your income is assigned to the trust. Your income must be direct deposited into the trust account when this can be arranged with the income source. If not, you must verify that the income is manually deposited into the trust account every month as it is received. Income that is not deposited into the trust account is not protected by the trust and is counted towards program income eligibility limits.
- Your monthly gross income from all sources, whether paid directly to you or to the trust, cannot exceed the current average private-pay rate for the geographic area in Arizona where you reside.

#### G. Pooled Trust:

This kind of trust is commonly known as a Special Needs Trust. To be entitled to special treatment, the trust must meet all of the general criteria in A, B, and C above, in addition to the following:

- The trust account must be established by you, your parent, grandparent, legal guardian, or a court.
- You must be disabled (as determined by the Social Security Administration and/or be medically eligible for ALTCS as determined by the AHCCCS Pre-Admission Screening Tool) at the time the trust was established.
- The trust must be managed by a non-profit association and contain separate trust accounts of more than one individual. A separate account within this pooled trust must be maintained for you and must contain only your income and resources. However, the income or resources of all beneficiaries of the trust may be pooled for investment and management purposes.

#### H. Treatment of Resources and Income For Special Treatment Trusts

##### How We Treat Resources

The corpus of a trust that is entitled to special treatment is excluded as a resource.

##### How We Treat Transfers to Special Treatment Trusts

The transfer of income or resources to a special treatment trust may affect your eligibility. The effect of a transfer on a special treatment trust depends on the type of trust:

- (1) A transfer penalty does not apply to income or resources transferred to a special treatment **trust for a disabled individual under age 65**. However, a transfer penalty does apply to any additions to this type of trust after you turn 65 years of age.

The amount to be recovered by AHCCCS is the total amount that is referenced above that exceeds the Share of Cost paid by the recipient, or the balance of the trust account, whichever is less.

If one of the following circumstances occurs, the balance of the trust is to be made payable to AHCCCS within 30 days of the occurrence:

- The recipient dies;
- The trust is revoked or otherwise terminated.

The trustee must maintain all trust account statements for every month that the trust account is open for future review of all trust activity. This information is required to be produced upon request, the recipient's death or termination of the trust.

#### 2. **Revocable and Irrevocable Trusts Created on and After August 11, 1993**

This section applies to all trusts established on and after August 11, 1993, which do not qualify as Special Treatment Trusts. The procedures in this section apply only to trusts established by one of the following:

- You;
- Your spouse;
- Your representative, including court or administrative body with legal authority to act in place of or on behalf of you or your spouse; and
- A person, court, or administrative body acting at the direction of or on request of you or your spouse.

- Any other payments.

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Actions which violate the terms of the trust or which limit the state's beneficiary rights include:

- Deposits of resources into an Income-only trust;
- Deposits of funds into the trust corpus which are the income or resources of another individual;
- Breaches of "spendthrift" provisions such as assigning, pledging, or otherwise encumbering the trust assets for certain personal debts or other obligations;
- Issuing disbursements from the trust, which are not for the benefit of the A/R (see Section B and J);
- Trust terminations without appropriate settlement with AHCCCS;
- Material misrepresentation of trust income or distribution transactions; and
- Failure to comply with trust reporting or verification requirements.

#### M. Recovery Provisions – Trustee's Responsibilities

As primary beneficiary of the Special Treatment Trust, AHCCCS is required by state statute (A.R.S. §36-2934.01) and federal law (42 U.S.C. §1396p) to seek reimbursement from the recipient's trust corpus for medical payments made on the recipient's behalf. The following expenditures made by AHCCCS on or after August 11, 1993 are to be recovered:

- Capitation Payments,
- Medicare Part A and B Premiums,
- Coinsurance and Deductibles,
- Reinsurance,
- Fee-for-Service, and

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- (2) A transfer penalty is applicable to income transferred to an **income-only trust**. The transfer penalty is based on the difference between the amount of your monthly income put into the trust and the monthly amount paid out on your behalf.
- (3) A transfer penalty may apply to income or resources transferred to a **pooled trust** unless the trust also meets the criteria for a **trust established for a disabled individual under age 65**. The transfer penalty would apply to the difference between the amount of your income and resources put into the trust and the amount paid out on your behalf.

#### How We Treat Income Assigned to or Disbursed from Special Treatment Trusts

You or your representative must report your income which is assigned to the trust, your non-assigned income (if any) and all disbursements made from the trust (see Section I). If the trustee fails to provide this information, your eligibility may be denied or discontinued. If the trustee reports this information untimely, it may also affect your eligibility or share of cost for a future month.

Income and trust disbursements are treated as follows for all three types of special treatment trusts, regardless of the trust stipulations related to disbursements or discretionary clauses:

- Income For the Eligibility Determination

The income used for the eligibility determination consists of:

- Income you receive directly (income that is not put into the trust);
- Disbursements from the trust directly to you, for any reason, including the personal needs allowance; and
- Disbursements from the trust to a third party to purchase food or shelter on your behalf.

Disbursements from the trust to purchase other services (special medical needs, etc.) are not counted as income.

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For example, if the trust disburses \$200 to you, \$400 to your Landlord for rent and \$200 to a pharmacy for medical supplies, only \$600 (the total amount issued to you and your Landlord) will be counted as income in determining eligibility.

- Income for the Share of Cost

Share of Cost means the calculation which determines the amount of your income, if any, that you are obligated to contribute to the cost of long term care. All of the income you receive, whether assigned to the trust or not, is used for the share of cost calculation. This includes payments made by an annuity that is held by your trust. Allowable share of cost deductions are subtracted from this total income to arrive at the share of cost you will be required to pay. The share of cost you must pay is limited to the lesser of the share of cost or the monthly capitation amount paid to your program contractor.

The trustee must pay the share of cost as directed by the ALTCS Program Contractor.

I. Reporting Disbursements from Special Treatment Trusts

The trustee of your Special Treatment Trust is required to provide information about current trust income, disbursements and resources at the time of application or when the trust is created, if later. All Special Treatment Trust trustees must also provide a written estimate of all anticipated trust disbursements for the first twelve months of eligibility. Once benefits are approved, the trustee may be required to provide verification of all trust disbursements since the time of the previous determination and may also be required to provide additional written estimates of trust income and disbursements.

In addition, the trustee is required to report changes in previously reported income and disbursements 45 days in advance of the change. If the trustee cannot give 45 days advance notice of changes,

the trustee must report changes within 30 days of the date the change occurred. Failure to report changes in trust income or disbursements, at least 45 days in advance, may result in the penalties described in Section J.

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J. Penalty for Untimely Reports of Changes in Trust Income or Disbursements

When changes in trust income or countable trust disbursements are reported less than 45 days in advance, these changes can affect your eligibility or share of cost for a future month. For example, if an increase in trust income in June was not reported until July, the share of cost increase for both June and July will be added to the August Share of Cost. Similarly, if a disbursement is issued that would have caused ineligibility for July but it is not reported until September, the month of ineligibility that should have been applied to July will be applied to October instead.

In addition, improper trust disbursements in violation of Arizona statute (A.R.S. 36-2934.01) will be considered a transfer for uncompensated value and a penalty period of ineligibility may be imposed by the administration.

K. Penalty for Continued Benefits During an Appeal

When a month of ineligibility due to trust disbursements or an increase in share of cost due to assigned income has been delayed due to a timely filing of a hearing request, and the agency action is later affirmed during the appeal process, the month of ineligibility or increase in share of cost will be applied to the earliest future month.

L. Loss of Special Treatment Status Due to Violation of the Trust

A trust can lose its entitlement to special treatment if the trustee takes an action which violates the terms of the trust or the State's beneficiary rights. When a violation has occurred, the trust is no longer entitled to special treatment. Instead, the trust shall be treated as either a Revocable or Irrevocable trust in accordance



with Section 2 of this brochure. This will probably result in the beneficiary losing eligibility for ALTCS benefits.

Ineligibility will continue until the trustee corrects the violation.